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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH,
CENTRAL DIVISION**

RIVERROCK BIOSCIENCE, LLC, a Delaware
limited liability company,

Plaintiff,

v.

N8 MEDICAL, LLC, a Nevada limited liability
company, N8 MEDICAL, INC., a Nevada
corporation,

Defendants.

**SECOND AMENDED
COMPLAINT**

Civil No. 2:11-cv-01157-PMW

Pursuant to the Court's Order of February 2, 2012 (Docket No. 14), Plaintiff RiverRock Bioscience, LLC, for its second amended complaint against defendant N8 Medical, LLC and N8 Medical, Inc., hereby states and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff RiverRock Bioscience, LLC ("RiverRock") is a Delaware limited liability company having its principal place of business in Orem, Utah. RiverRock is in the business of commercializing, manufacturing, selling, and distributing, in certain fields, various

products relating to certain antimicrobial and antibiotic technology developed by Brigham Young University (“BYU”), pursuant to certain license agreements between BYU and RiverRock.

2. Defendant N8 Medical, LLC is a Nevada limited liability company with its principal place of business located in Columbus, Ohio. N8 is in the business of commercializing, manufacturing, selling, and distributing, various products relating to certain antibiotic technology developed by BYU. N8 purports to have subsequently acquired exclusive rights in certain fields of use pursuant to a certain license agreement between N8 and BYU.

3. Defendant N8 Medical, Inc. is a Nevada corporation with its principal place of business located in Columbus, Ohio. N8 Medical, Inc. has secured certain interests in the license agreement between BYU and N8 Medical, LLC. N8 Medical, Inc. and N8 Medical, LLC will be referred to collectively herein as “N8.”

4. The license agreement between N8 and BYU was entered subsequent to one of the license agreements between BYU and RiverRock. Substantial disputes and controversies have arisen between RiverRock and N8 as to the scope of their respective license agreements and the priority of their respective rights regarding of a variety of fields.

5. All of the license agreements at issue in this matter were negotiated and entered into within the State of Utah and provide that Utah law shall govern their construction.

6. Because this action arises under the Patent Laws of the United States, including 35 U.S.C. § 100 et. seq., this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Further, because this action presents an actual controversy with respect to the infringement of the patents in suit, the Court may grant the declaratory relief sought pursuant to

28 U.S.C. §§ 2201 and 2202. This Court also has subject matter jurisdiction over the Claims asserted in this Complaint pursuant to 28 U.S.C. § 1332(a).

7. The value of the matter in controversy exceeds \$75,000 exclusive of interest and costs and RiverRock and N8 are citizens of different States.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400. In its license with BYU, N8 agreed to venue in Utah County, Utah for any legal disputes as between BYU and N8.

9. A substantial and actual controversy exists between the parties which is of sufficient immediacy and reality to warrant declaratory relief.

10. This controversy concerns, *inter alia*, a dispute between the parties with respect to separate license agreements into which they each entered with BYU.

11. This Court has personal jurisdiction over N8. N8, directly and through their agents, have availed themselves of the jurisdiction of the courts of the state of Utah through engaging in extensive business negotiations and operations in this jurisdiction, engaging and utilizing Utah-based legal counsel, and engaging and otherwise collaborating with faculty and staff at the University of Utah in connection with N8's business and commercialization efforts. Moreover, in its license with BYU, N8 agreed to venue in Utah County, Utah for any legal disputes.

GENERAL ALLEGATIONS

12. On July 20, 2010, BYU and RiverRock entered into an Exclusive License Agreement ("RiverRock Exclusive License") relating to ceragenin compounds, also known as catatonic steroid antibiotics ("CSA"), a technology patented by BYU. The RiverRock Exclusive License grants exclusive rights to RiverRock in U.S. Patents No. 6,350,738 ("the '738 patent"

attached hereto as Exhibit A), No. 6,486,148 (“the ’148 patent” attached hereto as Exhibit B), No. 6,767,904 (“the ’904 patent” attached hereto as Exhibit C), and No. 7,598,234 (“the ’234 patent” attached hereto as Exhibit D) in defined fields of use, referred to in the contract as the “Field of Application.”

13. CSA compounds are synthetic compounds that mimic the polyfunctional and broad spectrum activity of a key component of the human innate immune system.

14. Immediately following execution of the License Agreement, RiverRock expended considerable time, resources, and money attempting to commercialize the CSA technology within the Field of Application granted to RiverRock.

15. On or about September 9, 2010, BYU entered into an Exclusive License Agreement with N8 (the “N8 License”). The N8 License purports to grant to N8 certain fields of application that are in conflict with the RiverRock Field of Application.

16. Since September of 2010, N8 has engaged in various business activities in fields of application previously granted exclusively to RiverRock.

17. N8 has asserted that certain fields of application in dispute between N8 and RiverRock relating to CSA compounds belonged to a company known as Ceragenix Corporation, Inc. (“Ceragenix”), as of the date of the RiverRock license (July 20, 2010). RiverRock disputes N8’s interpretation of the Ceragenix license.

18. An actual case or controversy has arisen between the parties. N8 has asserted that it is the exclusive licensee of the ’738, ’148, ’904, and ’234 patents in fields of use exclusively licensed to RiverRock and that RiverRock’s intended making, using, or selling of the products and processes claimed in the patents in suit within those fields is unauthorized.

FIRST CLAIM FOR RELIEF

Declaratory Judgment - Non-infringement of U.S. Patent Nos. 6,350,738, 6,486,148, 6,767,904, and 7,598,234

19. RiverRock hereby incorporates into this Claim all of the allegations of the prior paragraphs of this Complaint.

20. N8 purports to be the exclusive licensee of the '738, '148, '904, and '234 patents within fields of use within the RiverRock Field of Application that were previously exclusively licensed to RiverRock.

21. RiverRock has been manufacturing a compound and developing partnerships to experiment with and commercialize technology that N8 considers to be practicing the patents within fields purported to be exclusively licensed to N8. N8 has threatened to attempt to prevent RiverRock from engaging in this business or take legal action asserting N8's alleged exclusive rights against RiverRock.

22. RiverRock's desired actions do not and would not infringe, either directly or indirectly, any claim of the patents in suit at least because these actions fall within the exclusive rights granted to RiverRock by BYU prior to the attempted grant of any similar rights to N8 from BYU.

23. Accordingly, there exists an actual controversy between RiverRock and N8 concerning whether the claims of the '738, '148, '904, and '234 patents are infringed by RiverRock.

24. Pursuant to 28 U.S.C. §§ 2201, 2201, RiverRock is entitled to a declaratory judgment that its making, using, offering to sell, selling, or sublicensing of products or processes within the RiverRock Field of Application, or contracting with third parties to do the same, does

not infringe the '738, '148, '904, and '234 patents by virtue of the RiverRock Exclusive License with BYU.

SECOND CLAIM FOR RELIEF

Declaratory Judgment – Scope of Field of Application

25. RiverRock hereby incorporates into this Claim all of the allegations of the prior paragraphs of this Complaint.

26. Pursuant to 28 U.S.C. §§ 2201, 2202, RiverRock is entitled to a declaratory judgment from this Court that, under the RiverRock Exclusive License, RiverRock was granted the exclusive right to practice the CSA technology within the RiverRock field of application and that the RiverRock field of application is not in conflict with the Ceragenix field of application.

THIRD CLAIM FOR RELIEF

Declaratory Judgment – Priority of Exclusive License

27. RiverRock incorporates into this Claim all of the allegations of the prior paragraphs of this Complaint.

28. Pursuant to 28 U.S.C. §§ 2201, 2202, RiverRock is entitled to a declaratory judgment from this Court declaring the rights and remedies of the parties as relating to the CSA compound technology licensed exclusively by both of them from BYU.

PRAYER FOR RELIEF

WHEREFORE, RiverRock prays for the following relief:

1. On the FIRST CLAIM FOR RELIEF for a declaratory judgment that RiverRock's making, using, offering to sell, selling, or sublicensing of products or processes within the RiverRock Field of Application, or contracting with third parties to do the same, does not infringe the '738, '148, '904, and '234 patents.

2. On the SECOND CLAIM FOR RELIEF for a declaratory judgment that under the RiverRock Exclusive License, RiverRock was granted the exclusive right to practice the CSA technology within the RiverRock field of application.

3. On the THIRD CLAIM FOR RELIEF for a declaratory judgment declaring the rights and remedies of the parties as to the scope and meaning of their respective exclusive licenses.

4. That this case be declared an exceptional case pursuant to 35 U.S.C. § 285 and that RiverRock be awarded its attorneys' fees in litigating this action.

5. For RiverRock's costs in litigating this action.

6. For any and all such other and additional relief as the Court deems just and proper.

DATED this 2nd day of February, 2012.

DURHAM JONES & PINEGAR, P.C.

By /s/ Clinton E. Duke
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